

Code of Virginia

Effective July 1, 2008

Title 63.2 - WELFARE (SOCIAL SERVICES).

Chapter 13 - Adoption Assistance for Children with Special Needs

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§ 63.2-1300. Purpose and intent of adoption assistance.

The purpose of adoption assistance is to facilitate adoptive placements and ensure permanency for children with special needs. Adoption assistance includes subsidy payments made pursuant to requirements set forth in this chapter. A child with special needs is any child (i) in the custody of a local board that has the authority to place the child for adoption and consent thereto in accordance with the provisions of §§ 63.2-900, 63.2-903 and 63.2-1105 or (ii) in the custody of a licensed child-placing agency, for whom it has been determined that it is unlikely that the child will be adopted within a reasonable period of time due to one or more factors including, but not limited to:

1. Physical, mental or emotional condition existing prior to adoption;
2. Hereditary tendency, congenital problem or birth injury leading to substantial risk of future disability; or
3. Individual circumstances of the child related to age, racial or ethnic background or close relationship with one or more siblings.

Child with special needs shall also include a child for whom the factors set out in subdivision 1 or 2 are present at the time of adoption but are not diagnosed until after the final order of adoption is entered and no more than one year has elapsed.

(1974, c. 507, § 63.1-238.1; 1978, c. 536; 1981, c. 359; 1987, cc. 650, 681; 2000, cc. 290, 830, § 63.1-238.03; 2002, c. 747.)

§ 63.2-1301. Subsidy payments; when adoptive parents, etc., eligible.

Subsidy payments shall be made to the adoptive parents and other persons on behalf of a child in the custody of the local board or in the custody of a licensed child-placing agency and placed for adoption, pursuant to this chapter, if it is determined that:

1. The child is a child with special needs; and
2. The adoptive parents are capable of providing the permanent family relationships needed by the child in all respects except financial.

Such subsidy payments shall be made, however, only after a reasonable but unsuccessful effort has been made to place the child with appropriate adoptive parents without the provision of adoption assistance pursuant to this chapter except in cases where the child has developed significant emotional ties with the prospective adoptive parents while in the care of such parents as a foster child.

(1974, c. 507, § 63.1-238.2; 1982, c. 171; 1983, c. 292; 1987, cc. 650, 681; 2002, c. 747.)

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§ 63.2-1302. Subsidy payments; maintenance; special needs; payment agreements; continuation of payments when adoptive parents move to another jurisdiction; funds.

A. Subsidy payments shall include:

1. A maintenance subsidy that shall be payable monthly to provide for the support and care of the child; however, the maintenance subsidy shall not exceed the maximum regular foster care payment that would otherwise be made for the child; and
2. A special need subsidy to provide special services to the child that the adoptive parents cannot afford and that are not covered by insurance or otherwise, including, but not limited to:
 - a. Medical, surgical and dental care;
 - b. Hospitalization;
 - c. Legal services in effecting adoption;
 - d. Individual remedial educational services;
 - e. Psychological and psychiatric treatment;
 - f. Speech and physical therapy;
 - g. Special services, equipment, treatment and training for physical and mental handicaps; and
 - h. Cost of adoptive home study and placement by a child-placing agency other than the local board.

Special need subsidies may be paid to the vendor of the goods or services directly or through the adoptive parents.

Subsidy payments shall cease when the child with special needs reaches the age of eighteen years. If it is determined that the child has a mental or physical handicap, or an educational delay resulting from such handicap, warranting the continuation of assistance, subsidy payments may be made until the child reaches the age of twenty-one years.

B. Maintenance subsidy payments and special need subsidy payments shall be made on the basis of an adoption assistance agreement entered into by the local board and the adoptive parents or, in cases in which the child is in the custody of a licensed child-

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placing agency, an agreement between the local board, the licensed child-placing agency and the adoptive parents.

Prior to entering into an adoption assistance agreement, the local board or licensed child-placing agency shall ensure that adoptive parents have received information about their child's eligibility for subsidy; about their child's special needs and, to the extent possible, the current and potential impact of those special needs. The local board or licensed child-placing agency shall also ensure that adoptive parents receive information about the process for appeal in the event of a disagreement between the adoptive parent and the local board or the adoptive parent and the child-placing agency and information about the procedures for revising the adoption assistance agreement.

Adoptive parents shall submit annually to the local board within thirty days of the anniversary date of the approved agreement an affidavit which certifies that (i) the child on whose behalf they are receiving subsidy payments remains in their care, (ii) the child's condition requiring subsidy continues to exist, and (iii) whether or not changes to the adoption assistance agreement are requested. Failure to provide this information may be grounds for suspension of the subsidy payment until such time as the information is provided.

Maintenance subsidy payments made pursuant to this section shall not be reduced unless the circumstances of the child or adoptive parents have changed significantly in relation to the terms of the subsidy agreement.

C. Responsibility for subsidy payments for a child placed for adoption shall be continued by the local board that initiated the agreement in the event that the adoptive parents live in or move to another jurisdiction, provided that the adoptive parents meet the conditions of the agreement and provided that an agreement can be made with the appropriate agency of the locality within or without the Commonwealth where the adoptive family lives or is moving to provide the necessary assistance in administering the subsidy agreement.

D. Payments may be made under this chapter from appropriations for foster care services for the maintenance and medical or other services for children who have special needs in accordance with § 63.2-1301. Within the limitations of the appropriations to the Department, the Commissioner shall reimburse any agency making payments under this chapter. Any such agency may seek and accept funds from other sources, including federal, state, local, and private sources, to carry out the purposes of this chapter.

(1974, c. 507, § 63.1-238.3; 1976, c. 216; 1977, c. 533; 1978, c. 536; 1980, c. 280; 1981, c. 359; 1982, c. 171; 1985, c. 568; 1987, cc. 650, 681; 1988, c. 417; 1989, c. 191; 2000, c. 290; 2002, c. 747.)

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§ 63.2-1303. Qualification for subsidy payments.

Qualification for subsidy payments shall be determined by the local board or by the licensed child-placing agency, whichever has custody of the child, in accordance with regulations adopted by the Board.

(1974, c. 507, § 63.1-238.4; 1976, c. 216; 1981, c. 359; 1987, cc. 650, 681; 2002, c. 747.)

§ 63.2-1304. Appeal to Commissioner regarding adoption assistance.

Any applicant for or recipient of adoption assistance aggrieved by any decision of a local board or licensed child-placing agency in granting, denying, changing or discontinuing adoption assistance, may, within 30 days after receiving written notice of such decision, appeal therefrom to the Commissioner. Any applicant or recipient aggrieved by the failure of the local board or licensed child-placing agency to make a decision within a reasonable time may ask for review by the Commissioner. The Commissioner may delegate the duty and authority to duly qualified hearing officers to consider and make determinations on any appeal or review. The Commissioner shall provide an opportunity for a hearing, reasonable notice of which shall be given in writing to the applicant or recipient and to the proper local board in such manner and form as the Commissioner may prescribe. The Commissioner may make or cause to be made an investigation of the facts. The Commissioner shall give fair and impartial consideration to the testimony of witnesses, or other evidence produced at the hearing, reports of investigation of the local board and local director or licensed child-placing agency or of investigations made or caused to be made by the Commissioner, or any facts that the Commissioner may deem proper to enable him to decide fairly the appeal or review. The decision of the Commissioner shall be binding and considered a final agency action for purposes of judicial review of such action pursuant to the provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.).

(2003, c. 467.)